IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3047 OF 2004

Mr.V.V.Pai for the Petitioner.

Mr.P.S.Dani the Respondent No.1

Mr.V.D.Bhavsar for Respondent No.2.

Office Notes, Office Memoranda of Coram, Court's or Judge's appearances, Court's orders order or directions	
	CORAM: D.K.DESHMUKH, J.
	DATED: 20TH APRIL,2005

P.C.:

1. By this petition the Petitioner challenges the order passed by the trial court allowing the amendment in the written statement. Suit admittedly is a suit for partition. Amendment is sought by the Defendant in the written statement. Amendment in the written statement, which results in including other properties than the one in relation to which partition is sought by the Plaintiff does not really amount to

counter claim. Therefore, the trial court and the Defendant have committed an error in terming it as a counter claim. It really is an application for amendment in the written statement, so that other properties which according to the Defendant are also joint family properties can be subjected to partition. In a suit filed for a decree for partition the Defendant who has share in the joint properties is also in the position of the Plaintiff, therefore a Defendant can claim in his written statement that apart from the properties which are mentioned in the plaint there are other properties which are joint and deserve to be partitioned.

2. I do not find any patent illegality in the order. Petition is rejected.

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